

DECISION

Dispute Codes MNDC MNSD MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 16, 2009. Mail receipt numbers were provided in the Landlord's documentary evidence. The Tenant was deemed to be served the hearing documents on April 21, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenant did not appear at the hearing despite being served with notice of the hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order and to retain the security deposit pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began on August 1, 2008, was scheduled to end on July 31, 2009, however the tenancy ended on March 26, 2009 when the Tenant vacated the rental unit.

The Landlord provided documentary evidence in the form of an e-mail from the Tenant dated February 2, 2009 which states that the Tenant is providing notice to end the tenancy effective March 15, 2009. The Landlord argued that the Tenant did not vacate the rental unit until March 26, 2009.

The Landlord had initially claimed \$500.00 as a fee for the Tenant breaking the lease early; however after reviewing the tenancy agreement, the Landlord withdrew his request for this claim.

The Landlord testified that the rental unit was re-rented and the new tenant moved in on March 26, 2009, after the Tenant vacated the unit.

The Tenant paid \$700.00 on March 1, 2009 towards the March 2009 rent. The Landlord is claiming \$519.32 for prorated rent for the period of March 16 to March 26, 2009.

The Landlord is claiming at total of \$328.53 (\$166.61 + \$161.92) for advertising costs incurred to re-rent the unit as quickly as possible. Documentary evidence provided by the Landlord is in the form of invoices from the local newspaper for advertising.

The Landlord is also seeking to recover the cost of the filing fee from the Tenant for this application.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the Landlord's right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Unpaid Rent – The Tenant's original notice was to end the tenancy on March 15, 2009 and the Tenant paid \$700.00 towards ½ of a months rent. Based on the testimony and evidence before me the Tenant occupied the rental unit until March 26, 2009.

Section 57(3) of the *Residential Tenancy Act* states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy has ended; I find that the tenancy was scheduled to end on March 15, 2009 and the Tenant over held the rental unit for 11 days (March 16 – 26, 2009). Based on the aforementioned, I find that the Landlord has proven the test for damage or loss as listed above and I hereby approve his claim for unpaid rent in the amount of \$506.30 (\$1400.00 x 12 divided by 365 days x 11 days)

Broken Lease Fee \$500.00 – The Landlord withdrew his claim for \$500.00 in relation to the broken lease agreement.

Advertising – The Landlord has provided documentary evidence to support that the Tenant ended the tenancy, prior to the expiry of the fixed term lease in contravention of

section 45 of the Act, and evidence that the Landlord suffered a loss in the form of advertising costs totalling \$328.53. (\$166.61 + \$161.92). Based on the aforementioned I find that the Landlord has proven the test for loss as listed above and I hereby approve his claim in the amount of \$328.53.

Filing Fee – The Landlord has primarily been successful with their application and I find that they are entitled to recover the cost of the filing fee from the Tenant.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for March 16 – 26, 2009	\$506.30
Advertising Costs	328.53
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$884.83
Less Security Deposit of \$700.00 plus interest of \$5.05	- 705.05
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$179.78

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$179.78. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 16, 2009.

Dispute Resolution Officer